IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.217 OF 2006

IN

ARBITRATION PETITION NO.543 OF 2004

Jayesh M. Gandhi & others. ...Petitioners.

vs.

Yogendra N. Thakkar & others. ...Respondents

Mr.Paritosh Jaiswal i/b. M/s.Kanga & Co., for Petitioners.

Mr.Snehal Shah with N.C.Parikh i/b. Mansukhlal & Hiralal & Co.,. for Respondentsb 1 & 2.

CORAM: D.K.DESHMUKH,J.

DATED: 21st November,2006..

P.C.:-

1. This is a notice of motion taken out for direction to the Prothonotary and Senior Master of this Court to file complaint against the original petitioners viz.(1) Jayesh M. Gandhi, (2) Vinay D. Balse, (3)

Sujal A. Shah and (4) S.N.Shivkumar, for having committed offence amongst others punishable under Section 196 and 209 of Indian Penal Code. According to the respondent nos. 1 and 2, who have taken out this notice of motion which is supported by the affidavit, the petitioners nos. 1 to 4 in Arbitration Petition no.543 of 2004 have made the following statement in paragraph 12 of the petition:-

> "In furtherance of his ulterior motives the Respondent no.1 supported by the Respondent No.2 has in the period of about two weeks prior to the filing of the present Petition, gradually frozen the bank account of the said firm one after the other. The bank account at Sr.Nos.1,2,4 and 5 of Exh."B" has already been frozen by writing letters to Respondent nos.4,5,6 and 9."

According to the respondent nos. 1 and 2, thus, the statement has been made on oath in the proceedings filed before this Court by the original petitioner nos.1 to 4 that the bank accounts of the firm with the four banks viz. respondent nos.4, 5, 6 and 9 were frozen because the respondent nos. 1 and 2 addressed a letter to those banks. It is claimed by the respondent nos. 1 and 2 that the respondent nos. 1 and 2 had never written any letter to the UTI Bank for freezing the account of the firm. It is pointed out that the UTI Bank on its own had frozen the

account of the firm because there were disputes going on amongst the partners of the firm. According to the respondent nos. 1 and 2, thus a false allegation has been made on oath by the original petitioners that because of the letter written by the respondent nos. 1 and 2 the account of the firm with the respondent no.7-UTI Bank was frozen. According to the respondent nos. 1 and 2, the original petitioner nos. 1 to 4 had made this claim in their petition knowing fully well that the claim is untrue and false and therefore, they are guilty of the offence punishable under Section 209 of Indian Penal Code. According to the respondent nos. 1 and 2, they are also guilty of the offence punishable under Section 192 of Indian Penal Code.

2. I have heard the learned Counsel appearing for the original petitioners. The summary of defence put up by the original petitioners is that in the statement made by them in paragraph 12 of their arbitration petition they have not specifically stated that the letter was written by the respondent nos. 1 and 2 to the UTI Bank. According to them, therefore, it cannot be said that they have made a false statement in the petition. In my opinion, the statement quoted above has to be read in its entirety. If it is so read it becomes clear that in the first part of the statement, the petitioner nos. 1 to 4 have alleged that the respondent no.1 supported by the respondent no.2 has taken steps to gradually freeze the bank account of the firm and then they said that

the letters were addressed to the banks for that purpose. It obviously means, according to the original petitioners, that the letters were addressed by the respondent nos. 1 and 2 to the Banks to freeze the accounts. What is significant is that the petitioner nos. 1 to 4 are the Chartered Accountants by profession and therefore, they hold position of trust vis-a-vis their clients and therefore, they are under a duty at level higher than other litigants to be truthful and careful while making statements in the Court. That ultimately the consent terms were filed in the arbitration petition filed under Section 9 of the Arbitration and Conciliation Act, in my opinion, is not material for deciding whether for having made false statement before the Court with full knowledge, they are liable to be prosecuted. In my opinion, considering the profession in which the petitioner nos. 1 to 4 are engaged, their conduct of making false statement before the Court is to be taken seriously.

3. The notice of motion is therefore, granted in terms of prayer clause (a). It is directed that the Prothonotary and Senior Master of this Court shall make complaint to the appropriate criminal Court against the petitioner nos. 1 to 4 for having committed offence punishable under Section 196 and 209 of Indian Penal Code. The Prothonotary and Senior Master of this Court shall make complaint under the provisions of Section 195 of the Criminal Procedure Code.

The notice of motion is disposed of. The petitioner nos. 1 to 4 are also directed to pay costs of this notice of motion to the respondent nos. 1 and 2. The costs are quantified at Rs.25,000/-.